



IN THE MATTER OF:)	
)	
FLORENTINA LEGGHETTE,)	
Complainant,)	ChargeNo:2003CN0831
)	EEOC No: N/A
)	ALS No: 04-002
and)	
)	
)	
KENDALL HATCHETT,)	
Respondent.)	

On January 19, 2004, Administrative Law Judge Lindt issued an Order holding Respondent in default as a sanction for his unreasonable conduct and further setting the matter for a damages hearing. A public hearing on damages was held on February 2, 2005 at the Illinois Human Rights Commission (Commission) office. Respondent did not appear to participate in the public hearing; Complainant appeared *pro se* and testified on her own behalf.

The following are facts deemed admitted pursuant to the Order holding Respondent in default or are facts that were proven by a preponderance of the evidence at the public hearing on damages. Assertions made at the public hearing that are not addressed herein were determined to be unproven or were determined to be immaterial to this decision.

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3. Complainant was hired as a custodian by Beautify Professional Cleaning Service around May, 2000. Respondent, Kendall Hatchett (Hatchett), was Complainant's supervisor and Complainant reported directly to Hatchett.
4. Neither Complainant nor Respondent was represented by counsel throughout these proceedings.
5. From late June, 2002 through September 19, 2002, Respondent harassed Complainant by engaging in the following:
 - Complainant was startled when she turned around and observed that Respondent had come into the women's dressing room and had been watching Complainant undress down to her brassiere and underpants while she changed into her work clothes.
 - In June 2002, Respondent told Complainant, "Since you and Chris [Complainant's fiancé] are an item, I guess I don't have a chance." Complainant responded, "No you don't and you never will."
 - In August 2002, Respondent told Complainant that she was a very nice and sweet pleasant girl and that Chris was a lucky man to have someone like her. Respondent then stated that he meant his comments as complimentary and asked if his compliments made Complainant uncomfortable. Complainant told Respondent that she did not want to hear any more of his compliments because they made her uncomfortable.
 - In August 2002, Respondent asked Complainant how her fiancé gets a hot lunch and how could he get one too.
 - In September 2, 2002, Respondent called Complainant's home looking for Complainant's fiancée and when Complainant informed him that her fiancé was not available, Respondent asked if he had a pager or cellular telephone. When Complainant responded that he did not, Respondent

said, "I guess Chris just has you, huh?" Respondent then asked Complainant why she did not get her fiancé a pigeon.

- During September 2002, Respondent asked to shake Complainant's hand for a job well done; when Complainant extended her hand, Respondent slapped it away, grabbed and hugged her. Complainant pushed Respondent away and Respondent grabbed her by her buttocks. Complainant objected and Respondent apologized and said it was an accident.

- On September 8, 2002, while Complainant was in the women's locker room, Respondent entered the room without knocking or otherwise announcing his intent to enter, asked Complainant if he scared her and told her he was there to inspect the carpeting.

- On September 9, 2002, Complainant complained to Respondent that she was sick and tired of him sexually harassing her and Respondent replied, "You're still thinking about those incidents, you need to get over it, because I have never been accused of sexual harassment."

6. Complainant found Respondent's conduct unwelcome, unwanted and offensive and Complainant informed Respondent as such.
7. Respondent's conduct was "demeaning" to Complainant and made her feel "mad and scared."
8. In July 2002, Complainant reported Respondent's conduct to management and to her union representative.
9. On August 10, 2004, *pro se* Complainant and *pro se* Respondent attended a status hearing and agreed to participate in a settlement conference on September 15, 2004 with the assistance of Administrative Law Judge Lindt. On September 15, 2004, Complainant appeared; Respondent did not appear. A

- status was set for October 12, 2004. On October 12, 2004, Complainant appeared; Respondent did not appear. Complainant made an oral motion for default as a sanction for Respondent's failure to appear for the September 15, 2004 settlement conference and for Respondent's failure to appear for the instant status. An Order was entered ordering Respondent to file a written response to the motion no later than October 29, 2004 and setting a hearing for argument on the motion November 9, 2004.
10. On November 9, 2004, both Parties appeared *pro se* and indicated their respective continued desire to participate in a settlement conference. A settlement conference was immediately held with the assistance of Administrative Law Judge Lindt. The Parties agreed to an amount of \$700.00 in settlement of this matter and Respondent agreed to appear on January 5, 2005 to tender a cashier's check to Complainant in open tribunal in consummation of the settlement. Judge Lindt entered an Order memorializing this agreement. The Order further indicated that failure of Respondent to appear would subject him to monetary sanctions and a default judgment.
11. On January 5, 2005, Complainant appeared; Respondent did not appear. Judge Lindt entered an order continuing the matter to January 18, 2005 and warning Respondent that failure to appear with the necessary funds in execution of the settlement agreement would subject him to monetary sanctions and a default judgment.
12. On January 18, 2005, Complainant appeared; Respondent did not appear. Judge Lindt entered an Order holding Respondent in default and further setting this matter for a hearing to determine the amount of Complainant's damages.
13. A damages hearing was held on February 5, 2005. Complainant appeared; Respondent did not appear.

CONCLUSIONS OF LAW

1. Complainant is an “aggrieved party” and Respondent is a managerial “employee” in accordance with the Act at Sections 5/1-103(B) and 5/2-101(A)(1)(a) respectively.
2. Because Respondent has been ruled in default, Respondent has admitted the allegations in the *Charge of Discrimination* and is liable for violating the Act.
3. Complainant is entitled to an award for emotional distress damages.
4. Complainant is entitled to monetary sanctions for her expenses for appearing at scheduled hearings.
5. Complainant is not entitled to attorney’s fees as Complainant was not represented by an attorney and incurred no attorney’s fees.
6. The Act at 775 ILCS 5/8A-102(I)(6) authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party’s failure to prosecute his case, appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge.
7. Respondent’s failure to appear at scheduled hearings and to obey orders of the Commission justify the entry of a default judgment in this matter.

DISCUSSION

Default Judgment

Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation for dismissal with prejudice where a party fails to appear at a scheduled hearing without requesting a continuance reasonably in advance, or unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays or protracts the proceedings. Similarly, 775 ILCS 5/8A-102(I)(6) authorizes a recommended order of dismissal, with prejudice, or of default as a sanction for a party’s failure to prosecute his case,

appear at a hearing, or otherwise comply with this Act, the rules of the Commission, or a previous Order of the Administrative Law Judge.

The record supports that Respondent's conduct in failing to appear for scheduled hearings and in ignoring Orders of this Commission has unreasonably delayed these proceedings, justifying an order of default.

After having agreed to attend a settlement conference set for September 15, 2004 with the assistance of Administrative Law Judge (ALJ) Lindt, Respondent failed to appear for the settlement conference, blatantly ignoring an Order of this Commission and wasting the time of Complainant and ALJ Lindt, who had both set aside a block of time in which to mediate the settlement.

Respondent continued to ignore Commission Orders when he failed to appear for a hearing on October 12, 2004, prompting Complainant's oral motion for default. I issued an Order ordering Respondent to file a written response to the motion no later than October 29, 2004. I further ordered the Parties to appear on November 9, 2004 for oral argument and a decision on the motion. Respondent again ignored my Order when he failed to file a response. Although I would have been justified in granting a default based on Respondent's failure to file a response, I opted not to do so when Respondent appeared for the scheduled argument on the motion on November 9, 2004 and again represented to this tribunal that he was prepared to participate in a settlement conference.

Because both Parties were currently before me and due to Respondent's pattern of failing to appear for scheduled hearings, I interrupted my motion call and personally implored upon ALJ Lindt to disrupt her work and conduct an immediate settlement conference with the Parties. ALJ Lindt graciously accepted and, with her assistance, the Parties agreed to terms settling this matter for \$700.00. Respondent agreed to appear at the Commission office on January 5, 2005 at 10:00 a.m., at

which time he would tender a cashier's check for \$700.0 to Complainant and Complainant agreed to file a motion for voluntary dismissal upon tendering. An Order was entered memorializing the terms of this settlement and further warning Respondent that if he failed to appear to effect the terms of the agreement on January 5, 2005, he would subject himself to monetary sanctions and a default judgment.

On January 5, 2005, Complainant appeared, but Respondent failed to appear to execute the settlement agreement. ALJ Lindt entered an order continuing the matter until January 18, 2005 to allow Respondent yet another chance to appear and consummate the settlement offers. This Order again warned Respondent that failure to appear on January 18, 2005 would subject him to monetary sanctions and the entry of a default order. On January 18, 2005, Respondent again ignored an Order of this tribunal and failed to appear. ALJ Lindt ordered Respondent held in default and set a damages hearing for February 2, 2005.

Damages

When a violation of the Act has occurred, the complainant should be placed in the position in which she would have been but for the discrimination. **Clark v. Illinois Human Rights Commission**, 141 Ill. App.3d 178, (1st. Dist. 1986). The purpose of a damage award is to make the Complainant whole.

Pecuniary

ALJ Lindt warned Respondent that, if he failed to appear for the January 18, 2005 hearing, monetary sanctions would be imposed awarding the Complainant costs for her travel time and transportation for appearing at the Commission on January 5, 2005 and January 18, 2005. Complainant testified that she paid \$5.00 each way for bus and train transportation to the January 5th and January 18th hearings. Complainant further testified that she has been on medical leave since June 2004; therefore she lost

no time from work as a result of having to attend the two hearings. Complainant is entitled to \$20.00 for costs incurred in attending the two aforementioned scheduled hearings in which Respondent failed to appear.

Emotional Distress

Complainant requests \$1,000.00 to compensate her for emotional distress suffered as a result of Respondent's discrimination. The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for her losses. **Smith v. Cook County Sheriff's Office**, 19 Ill. Rep. 131,145 (1985). However, the Commission will award damages beyond pecuniary if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for her actual damages. **Kincaid v. Village of Bellwood, Bd. Of Fire and Police Commissioners**, 35 Ill. HRC Rep. 172, 182 (1987). The mere fact of a civil rights violation, without more, even in cases of default, is insufficient to support an award for emotional distress. **Smith, supra**. Where pecuniary loss will not adequately compensate for actual damages, an amount to make up for the humiliation and embarrassment caused by the violation will be awarded. The measure of these damages should be based upon the nature and duration of suffering experienced by the Complainant. The amount should be sufficient to ease one's feelings regarding the civil rights violation, **Smith, supra**.

Complainant testified credibly as to her emotional suffering. Complainant was visibly upset during her testimony when describing that she felt scared, humiliated and demeaned by Respondent's conduct. Complainant further testified that Respondent would come on the floors in which she was the only person working and that seeing him "standing right there looking at me without saying a word, not knowing that he was coming up to that floor or coming up on me, really scared me." Complainant explained that being alone on the floor with Respondent made her afraid because she had been a

victim of a brutal rape in December 1994 and was very worried about it happening again. Complainant also testified credibly that, during the settlement conference on November 9, 2004, she became so extremely stressed by having to sit in the same room with Respondent during the negotiations that she started to feel sick, prompting her to seek medical attention to have a stress test. Complainant described Respondent's demeanor at that time as having a "look that's totally evil, I mean he's just got this evil look."

Although Complainant may have been more sensitive than others due to her previous unfortunate victimization not connected with the allegations here, the Commission follows traditional tort theory that the offender takes the victim as it finds him. **Snider and Consolidation Coal Co.**, __ Ill. HRC Rep. __ (1985SF0280, November 24, 1998), **Palumbo and Palos Community Hospital**, __ Ill. HRC Rep. __ (1996CA0145, January 10, 2000).

The size of the damage award should be based upon the degree of harm caused, not the specific type of behavior that caused that harm. **Palumbo, supra**. Complainant has demonstrated that, in addition to feeling scared and demeaned, she remains fearful of Respondent and that merely being in close proximity to him caused her symptoms sufficiently troublesome to prompt her to seek medical attention. I note that the settlement conference she attended with Respondent where she experienced the physical symptoms was ultimately for naught due to Respondent's failure to live up to the terms of the settlement agreement.

The nature and duration of suffering experienced by the Complainant is sufficiently severe to justify the requested amount of \$1,000.00 to compensate her for her emotional distress.

Medical Bill

Complainant moved into evidence a medical bill for \$579.00 dated November 10, 2004, in support of her testimony that she sought medical help after having attended the

November 9, 2004 settlement conference with Respondent. The medical bill indicates that Complainant underwent a heart scan; however, the heart scan procedure is dated September 20, 2004, indicating that it was conducted prior to Complainant's settlement conference with Respondent on November 9, 2004. Complainant submitted no medical bill for the performance of her stress test following the settlement conference. Thus, there is no evidence that Complainant is entitled to reimbursement for payments due to the stress test.

RECOMMENDATION

Accordingly, it is recommended that Respondent be held in default and that Complainant be awarded the following relief:

1. That Respondent pay to Complainant the sum of \$1,000.00 for her emotional distress;
2. That Respondent pay to Complainant \$20.00 in reimbursement for her transportation costs;
3. That Respondent cease and desist from further discrimination on the basis of sexual harassment in the workplace.

ENTERED: February 25, 2005

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section